



In the Matter of parts of land at  
Bucklebury Common, Bucklebury Newbury D

DECISION

This dispute related to all the subsisting registrations in the Rights Section of Register Unit No. CL.28 in the Register of Common Land maintained by the Berkshire County Council and is occasioned by Objection No. 30 made by D A Hartley Russell and noted in the Register on 26 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Newbury on 16 May 1978. The hearing was attended by Mr L Courts of Messrs. Courts and Co on behalf of the applicants for Rights whose Entries I will confirm as hereinafter mentioned other than the applicants under Entries Nos 4 and 33. The applicant under Entry No. 4 appeared by Mr Clarks Hoile and Miss Marshall who is beneficially entitled to the land for which rights are claimed under Entry No. 33 appeared in person. Mr H E Norman appeared in person to claim his right to take gravel under Entry No. 1.

Mr Hartley Russell the objector appeared in person it was agreed by the parties attending or represented at the hearing that I should confirm modified as hereinafter stated. The following Entries viz: 1 2 3 4 7 8 10 11 12 13 14 16 to 30 (inclusive) 33 35 to 40 (inclusive) 42 43 44 to 50 (inclusive) 52 54 56 57 58 60 61 62 63 65 66 69 70 71 72 73 75 79 to 91 (inclusive) 93 to 97 (inclusive) 99 100 101 102 104 106 108 to 129 (inclusive) 131 133 to 145 (inclusive) 149 151 153 155 157 158 161 163 164 166 167 and 170 to 175 (inclusive).

In the absence of any appearance by any of the applicants under any of the Entries other than those listed above I refuse to confirm those other Entries.

I can deal first with Mr Normans claim to take gravel. He told me that he had permission from Mr Russells predecessor to work a seam of gravel, and that he had continued to take gravel because so far as he was aware that permission had never been withdrawn. This activity was and is clearly permissive and cannot found a claim to a prescriptive right and I refuse to confirm Mr Normans claim to a right to take gravel.

I confirm all the Entries listed above (hereinafter called the confirmed Entries) and will now deal with the modification. Since the modifications are substantial the convenient course is to delete all the words in column 4 of the confirmed Entries and to substitute therefore the words hereinafter mentioned.

Each of the applicants under the confirmed Entries claimed what were described at the hearing as "Wooding Rights". It was agreed by Mr Russell and Mr Courts that Rights cannot be limited by a presentment of a Court Baron or Court Leet and that the Rights must be accurately defined in the Register and they further agreed that the correct definition of the wooding rights is as follows:-



"the right to take timber for repairs, to top all pollards which have been usually topped, to have hedgebote and firebote and to take furse and bracken"

and these words will be inserted in Column 4 of each of the confirmed Entries in place of the words deleted.

Some but not all the applicants under the confirmed Entries claimed grazing rights including the right to graze poultry under various descriptions. I am of opinion that the only commonable bird is a goose. There is no reference in Elton on Commons, Elton on copyholds. Scriven on copyholds or Harris and Ryan on Common Land to a right of pasture for poultry and the lack of any such reference in the recognised text books supports my view, which is I believe generally held that poultry are not commonable. Possible reasons for this may be that poultry cannot subsist on herbage, that before the days of wire netting the fences against the common were not adequate to prevent poultry having access to the common. The presence of poultry on the common who took little of the herbage was probably and still is in my view attributable to tolerance and not as of right. Mr Russell at the hearing did indicate that he was not likely to be less tolerant in the future than he and his predecessors had been in the past. For this reason I refuse to confirm any rights to graze poultry.

Mr Courts did refer me to a passage in Hansard where as compensation for an inclosure a commoner had been given compensation for not having the land for the use of his geese and poultry. I cannot accept that this reference in Hansard is authority for the proposition that poultry are commonable.

Mr Courts further argued that since Mr Russell did not in some cases now object to the registration of rights to graze poultry I had no jurisdiction to refuse to confirm these rights. Neither the Act of 1965 nor the Regulations made thereunder provide for a partial withdrawal of an objection. Mr Russell has made one objection and the disputes arising therefrom have been referred to me and I am bound by Section 6 of the Act either to refuse to confirm or to confirm with or without modification the registrations the subject of the Objection. Once there has been a reference the "matter" falls to be dealt with by a Commissioner and the Registration Authority has no power to amend the Register. Regulation 31 of the Commons Commissioners Regulations 1971 enables a Commissioner to give a decision by consent without a hearing but confer upon him a discretion whether or not to give the decision requested. It would be surprising if when the matter comes before a Commissioner at a hearing his discretion is less than that when he is requested to give a decision without a hearing.

I am of opinion that I cannot be required to confirm the Entry insofar as it relates to an alleged right which is unknown to the law I therefore refuse to confirm at claims to rights to graze poultry.

This leaves outstanding the claim for grazing rights for commonable animals save as hereinafter mentioned no evidence was offered to support those claims and I refuse to confirm any claims for grazing rights other than those set out below which are conceded by Mr Russell and which will be added to the wooding rights (as defined above) in substitution for the words deleted from column 4 viz:



<u>Entry No 1</u>	The right to turn out 2 pigs
<u>Entry No 4</u>	The right to graze 3 sheep or goats and to turn out 2 pigs
<u>Entry No 14</u>	The right to graze 3 goats and to turn out 1 pig
<u>Entry No 22</u>	The right to graze 1 sheep or 1 goat
<u>Entry No 23</u>	The right to graze 20 geese
<u>Entry No 25</u>	The right to graze 2 goats
<u>Entry No 33</u>	The right to graze 1 head of cattle or 3 sheep
<u>Entry No 37</u>	The right to graze 5 cattle or horses or 15 sheep or goats
<u>Entry No 50</u>	The right to graze 4 cattle or horses
<u>Entry No 102</u>	The right to graze 10 cattle or horses and to turn out 12 pigs
<u>Entry No 109</u>	The right to turn out 2 pigs
<u>Entry No 110</u>	The right to turn out 2 pigs
<u>Entry No 113</u>	The right to graze 8 cattle 2 goats and 6 geese and to turn out 3 pigs
<u>Entry No 116</u>	The right to graze 6 geese and to turn out 2 pigs
<u>Entry No 117</u>	The right to graze 8 horses or cattle
<u>Entry No 123</u>	The right to graze 12 geese
<u>Entry No 170</u>	The right to graze 30 cattle
<u>Entry No 171</u>	The right to graze 5 cattle
<u>Entry No 172</u>	The right to graze 12 cattle
<u>Entry No 173</u>	The right to graze 3 cattle or horses or 9 sheep or goats

The effect of this decision is that each of the confirmed entries will have wooding rights as defined above and the Entries mentioned above will also have the grazing rights stated above and that I refuse to confirm all other subsisting Entries.

The Registration authority may consider that the convenient course is to state on the existing register that the confirmed rights are final as modified in the supplemental register and have a clean supplemental register which will be the effective register in which Column 4 will set out the rights in accordance with this decision.



The direction I anticipate giving is that the Entries confirmed by this decision be ~~come~~ final modified as stated in the decision and that all other Entries became void. I would appreciate it if a direction in this form will be acceptable to the Registration Authority.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 20<sup>th</sup> day of July 1978  
C A Little

Commons Commissioner